IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

**O R D E R**

Keshavanand & Anr. Versus Dr. Harikrishna Arora.

S.B. Criminal Misc. Petition No. 935/2006
for quashing the Criminal Complaint No.
682/2002 (37/2002) dated 8-12-2002.

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Date of Order: September 14, 2006

**PRESENT**

**HON'BLE MR. JUSTICE H.R. PANWAR**

Dr. Sachin Acharya, for the petitioners.
Mr. G.R. Goyal, for the non-petitioner.

**BY THE COURT:**

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioners seek quashing of complaint No. 682/2002 (37/2002) dated 8-1-2002 filed under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter, qua the petitioners, pending before the Judicial Mgistrate, Sri Ganganagar (for short, "the trial Court" hereinafter).

I have heard learned counsel for the parties. Carefully gone through the complaint filed by non-petitioner Dr. Harikrishna Arora under Section 138 of the Act against firm Keshwanand Takchand and four others, as also the statement

made by the complainant as AW 1 before the trial Court.

It is contended by the learned counsel for the petitioners that Section 141 of the Act provides the offences by a company. Sub-section (1) of Section 141 of the Act provides that if the person committing an offence under Section 138 is a company, every person who, at the time of the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Learned counsel for the petitioners submits that in whole of the complaint, as also the statement made by the complainant AW 1, it has not been stated that the present petitioners were in charge and responsible to the company for conduct of its business and in absence of such an averment, they cannot be prosecuted. He has relied on a decision of the Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs, Neeta Bhalla & Anr., 2006 (1) NIJ 97 (SC) and a decision of this Court in Hazi Abadullah Vs. State of Rajasthan & Anr., 2006 (1) NIJ 378 (Raj.).

In S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr. (supra), the Hon'ble Supreme Court held that it is necessary to specifically aver in the complaint under Section 141 of the Act that at the time offence was committed, the person accused was

incharge of and responsible for conduct of business of company. This averment is an essential requirement of Section 141 and has to be made in the complaint. Without this averment being made in a complaint,the requirement of Section 141 cannot be said to be satisfied.

It is contended by the learned counsel for the non-petitioner that the matter before the Hon'ble Supreme Court was with respect of a company and, therefore, the Directors were not held responsible for the reason that there was no averment in the complaint that the Directors were incharge of and responsible for the conduct of business of the company, whereas in the instant case the petitioners are the partners of the firm and, therefore, they are liable. Learned counsel for the petitioners submits that the explanation (a) appended to Section 141 of the Act defines a “company” and provides that company means any body corporate and includes a firm or other association of individuals and, thus, the expression “company” includes a partnership firm. On this stand, learned counsel for the petitioners submits that the judgment of the Hon'ble Supreme Court applies with full force to the facts of the instant case. More so, learned counsel for the petitioners submits that the firm was dissolved by the settlement on 27.5.2001 and, therefore, on the relevant date of issuing the cheques, which is a later date, at any rate, the petitioners cannot be held liable.

Having considered the submissions made by the learned counsel for the parties and keeping in view the decision of the Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr. (suspra), in my view, on careful perusal of the complaint as well as the aforesaid decision of the Hon'ble Supreme Court, it has no where been averred in the complaint that the present petitioners were the incharge of and responsible to the firm for conduct of its business. In the circumstances, therefore, the complaint, qua the present petitioners, is liable to be quashed.

In the result, the criminal miscellaneous petition is allowed. Complaint No. 682/2002 (37/2002) dated 8-1-2002 pending before the trial Court qua the present petitioner is quashed.

(H.R. PANWAR), J.

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